

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MAR 16 2005

PATRICK FISHER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JOHNNY LANG, also known as
Melvin Pitchford,

Defendant-Appellant.

No. 04-4293
(D.C. No. 01:01-CR-47-TC)
(D. Utah)

ORDER AND JUDGMENT *

Before **SEYMOUR** , **BRISCOE** and **O'BRIEN** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata and collateral estoppel. The court generally disfavors citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Defendant Johnny Lang appeals the district court's order denying his motion for release pending appeal. On October 27, 2004, the district court held a hearing on Mr. Lang's motion for release pending appeal. The district court determined that Mr. Lang failed to establish by clear and convincing evidence that he is not a danger to the community, which is a threshold requirement for release under 18 U.S.C. § 3143(b)(1). The district court denied Mr. Lang's motion on this basis and Mr. Lang now appeals from that order.

We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3145(c). We have reviewed the briefs, the record, and the applicable law. Because the record supports the district court's determination that Mr. Lang did not establish by clear and convincing evidence that he is not a danger to the community, we AFFIRM the judgment for substantially the same reasons stated by the district court in its Order filed November 8, 2004.

ENTERED FOR THE COURT
PER CURIAM